IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO.736 OF 2003
IN
SUMMARY SUIT NO.686 OF 2003

Bank of India Mulund (E) Branch Plaintiffs

versus

Dilip Dharmshi Sotta and others Defendants

Mr.Anant B. Shinde for plaintiffs.
Mr.H.V.Chande for defendants.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 13th June 2005

PC :

1. Heard Mr.Shinde for plaintiff and Mr.Chande for defendants. In summary suit instituted by Bank on the basis of certain facilities given to the deceased sole proprietress, this summons for judgement is taken out and a decree is claimed against legal representatives of the deceased sole proprietress. It is firstly pointed out that inadvertently it is mentioned that the claim arises out of term loan facility but now it is corrected and stated that it arises out of an over-draft facility. The amounts are reflected in statement of account which is maintained in

the ordinary and regular course of business. Amount at the foot of such account is sought to be claimed.

2. On behalf of heirs it is pointed that it is not clear as to whether the balance has been confirmed during her life time by the sole proprietress. The correctness of the entries is disputed. Amongst other things, it is pointed out that there is some interpolation in the account. The maintainability of the suit as a summary suit is also seriously challenged by the heirs on the basis that their liability is not at all crystalised or determined. Contentions raised give rise to several triable issues and it cannot be said that defence as raised is vexatious or frivolous and with the purpose of delaying the claim of plaintiff.

3. Ultimately, the bank will have to establish and prove the entries in statement of account. Only thereafter can the liability be fastened on the plaintiffs. Unconditional leave to defend is granted to the defendants. Suit transferred to the list of commercial causes. In the light of the fact that the suit is instituted by a nationalised bank, its hearing is expedited.

Written statement to be filed within eight weeks from today. Usual orders for discovery and inspection. Liberty to apply for fixed date after pleadings are complete.

(S.C.DHARMADHIKARI, J.)